	11						
1	EDMUND G. BROWN JR.						
2	Attorney General of California JAMES M. LEDAKIS						
3	Supervising Deputy Attorney General ERIN M. SUNSERI						
4	Deputy Attorney General						
	110 West "A" Street, Suite 1100						
5	P.O. Box 85266						
6	Telephone: (619) 645-2071						
7	Facsimile: (619) 645-2061 Attorneys for Complainant						
8	BEFORE THE						
9	BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA						
10							
11]					
12	In the Matter of the Statement of Issues Against:	Case No. 2010 - 64					
13	BRENDA FOCHTMAN 555 Hillcrest Avenue						
14	Petoskey, MI 49770	STATEMENT OF ISSUES					
15	Applicant.						
16							
17	Complainant alleges:						
18	<u>PARTIES</u>						
19	1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in						
20	her official capacity as the Interim Executive Officer of the Board of Registered Nursing,						
21	Department of Consumer Affairs.						
22	2. On or about October 8, 2008, the Board of Registered Nursing, Department of						
23	Consumer Affairs received an application for a Registered Nursing License from Brenda						
24	Fochtman (Applicant). On or about September 29, 2008, Brenda Fochtman certified under						
25	penalty of perjury to the truthfulness of all statements, answers, and representations in the						
26	application. The Board denied the application on January 26, 2009.						
27	///						
28	111						
ĺ							

JURISDICTION

- 3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
- 4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that code.

STATUTES

- 5. Section 480 of the Code states:
- (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:
- (1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.
- (2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.
- (3) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

- 6. Section 490 of the Code states:
- (a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a

crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

- (b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.
- (c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.
 - 7. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- (a) Unprofessional conduct, which includes, but is not limited to, the following:
- (f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.
 - 8. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

- (c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.
 - 9. California Code of Regulations, title 16, section 1444, states, in pertinent part:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.

FIRST CAUSE FOR DENIAL OF APPLICATION

(March 1, 2006 Criminal Conviction for DUI on January 27, 2006)

- 10. Applicant's application is subject to denial under sections 2736, 2761, and 480, subdivision (a) (1) in that on or about March 1, 2006, in a criminal proceeding entitled State of Michigan v. Brenda Kay Fochtman in State of Michigan, 90th Judicial District, Emmett County Case No. 06-107, Applicant was convicted by her plea of guilty to PACC #257.6251-A (operating while intoxicated), a misdemeanor. The circumstances are as follows:
- a. On or about January 27, 2006, Applicant was arrested and charged with a violation of PACC #750.81D1 (assaulting/resisting/obstructing a police officer); and a violation of PACC #257.6251-A (operate while intoxicated). Applicant's BAC was .30%.
- b. On or about March 1, 2006, Applicant was sentenced as follows: 36 days in jail (with credit given for one day, service of five days of community service work in lieu of five days jail, and 30 days held in abeyance); six months probation; \$1,205.00 in fees and costs; ordered not to use, possess, or consume alcohol or controlled substances; submit to testing; obtain a substance abuse assessment and follow recommendations; and attend an alcohol safety class.

|| ///

27 ///

28 ///

///

///

///

///

SECOND CAUSE FOR DENIAL OF APPLICATION

(May 9, 2007 Criminal Conviction for DUI on April 14, 2007)

- 11. Applicant's application is subject to denial under sections 2736, 2761, and 480, subdivision (a)(1) in that on or about May 9, 2007, in a criminal proceeding entitled State of Michigan v. Brenda Kay Fochtman in State of Michigan, 90th Judicial District, Emmett County Case No. 07-510, Applicant was convicted by her plea of guilty to PACC #257.6251-A (operate while intoxicated), reduced from PACC #257.6256B (operate while intoxicated/second offense) The circumstances are as follows:
- a. On or about April 14, 2007, Applicant was arrested and charged with a violation of PACC #257.6256B (operate while intoxicated/second offense). The charge was subsequently reduced to a violation of PACC #257.6251-A (operate while intoxicated). Applicant's BAC was .10%.
- b. On or about May 9, 2007, Applicant was sentenced as follows: 93 days in jail (with credit given for one day); nine months probation; \$1470.00 in fees and costs; ordered not to use, possess, or consume alcohol or controlled substances; submit to random testing; completion of impact weekend within 90 days; and obtain a substance abuse assessment and follow recommendations.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Commission of Acts, Which if Done by a Licentiate, Would be Grounds for Suspension of Revocation of License)

12. Applicant's application is subject to denial under sections 2736 and 480, subdivision
(a)(3) of the Code in that Applicant's two convictions involving driving while intoxicated, as
described in paragraphs 10 and 11 above, would have constituted grounds for suspension or
evocation of her license had Applicant been a licentiate at the time the acts were committed.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 1. Denying the application of Brenda Fochtman for a Registered Nursing License;
- 2. Taking such other and further action as deemed necessary and proper.

DATED: _8/6/09

Louise R. Bailey, M.Ed., RN

Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs

State of California Complainant

SD2009803946

statement of issues.rtf